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ABSTRACT

The impact of academic/corporate partnerships on employment relationships on college campuses is examined, with attention to the concerns of faculty, administrations, and corporations. Topics such as patent and copyright ownership, conflict of interest, and collective bargaining relationships are discussed, along with the question of negotiating "protections" from unwarranted and unwanted corporate invasion. Discussion is focused on situations where corporate involvement on campus is not done according to policy or rules. Restrictions are often imposed on both faculty and administrations that threaten the nature of the academic enterprise. Universities must ensure that corporate political, investment, and employment practices are compatible with university goals. The following labor relations concerns are addressed: job security, subcontracting, and unit jurisdiction (i.e., the definition of the bargaining unit contained in the collective bargaining agreement). Guidelines concerning conflict of interest and copyrights issued by Harvard University and New York University are briefly described. Eleven corporate-supported programs in academic institutions are identified, along with four corporate degree-granting education programs for both employees and nonemployees. (SW)

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NEWSLETTER

National Center for the Study of Collective Bargaining in Higher Education and the Professions

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

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DO ACADEMIC/CORPORATE PARTNERSHIPS POSE NEW THREATS TO FACULTY EMPLOYMENT RELATIONSHIPS IN INSTITUTIONS OF HIGHER EDUCATION?

Editor's Note: In the inaugural issue of the new higher education journal, Thought and Action, the National Education Association explored the topic of "Research and the Academy." We at the National Center were invited to contribute an article on the labor relations impact on academic/corporate partnerships; that article appeared in Vol. 1, No. 1, Fall 1984. Set forth below is a more detailed analysis of the topic.

INTRODUCTION

Add yet another dimension to the ever-increasing complexity of faculty employment relationships in higher education--the emergence of the academic/corporate partnership. External forces have impacted on the unilateral rights of higher education institutions to govern themselves in a variety of ways. Since the post-World War II era traditional governance models have been redefined by the collective bargaining agreement in higher education, increasing federal regulation and affirmative action legislation. Now, further modification appears imminent with the development of academic/corporate partnerships.

Rule making and rule application are integral parts of corporate and university organizational systems, as they are in any political framework. Social scientists have long studied the rule-making process and its function as a means of legitimatizing power within the constraints of a societal model. However, while nearly everyone agrees as to the necessity for a rule-orientated society, the rules of corporate America differ greatly from those of academic America. Conflict over rule making and definition is once again evident as these two entities forge new alliances and linkages. The question of rule making in the context of this relationship is not the redefinition of rules but instead the question: under whose rules will "the game" be played? Must academics learn to adjust to the rules of the corporate model to obtain sponsored research or should the rules of the academy govern corporate America when it enters the university campus? Will a new set of rules develop based on negotiations and synthesis between these parties?

A review of the literature, limited as it may be, suggests that corporate involvement in higher education is becoming a significant practice. While most of the available information appears to be in the form of news releases or corporate developments, virtually nothing has been written about the impact on employment relationships.

DEFINING THE ISSUE

Universities offer corporations relatively low-cost research and development partnerships while receiving funding with less bureaucratic reporting procedures. Considering the current economic climate, every indication suggests continuance of this practice and growth in this area.

It is fair to say that one of the primary issues to be pursued is the question of client identification. Is the university to serve as the client of the corporation to conduct commissioned research or should the university view industry as one of many constituents that it must serve? Further compounding the problem is the American industrial goal of "out Japanning Japan" with corporations looking to the universities, among other entities, as a means of increasing productivity.

Assuming philosophy follows finance, economics is also at the crux of this problem. Past experience suggests problems discovered with federal funding are similar to those now encountered with corporate funding. Universities seeking to increase research grants, while at the same time preserving their autonomy, find themselves in a difficult position in many situations where federal contracts have become

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the prime vendor of funded research. Clark Kerr, in The Uses of The University, discussed problems associated with what he characterized as federal grant universities. He cited several problems concerning the receipt of federal funds. While accentuating the positive, Kerr used the following limerick to illustrate some of the negative consequences associated with external funding:

> There was a young lady from Kent
> Who said she knew what it meant
> When men took her to dine,
> Gave her cocktails and wine;
> She knew what it meant—but she went.

Kerr observed, "I am not so sure that the universities and their presidents always knew what it meant; but one thing is certain--they went."[1] Every indication is that they will continue to go and thus the relationship between academe and corporate America must be reexamined to ensure that the continued mission of the university--the unrestricted dissemination of information—is not compromised by the corporate mission—the profit motive. However, in summation he stated "...with all its problems,...federal research aid to universities has helped greatly in meeting national needs. It has greatly assisted the universities themselves. The nation is stronger. The leading universities are stronger."[2]

The purpose of this paper is to examine academic/corporate partnerships as they impact upon employment relationships on college campuses. Written from the vantage point of a neutral research center whose primary mission is the study of collective bargaining in higher education, the concerns of faculty, administrations, and corporations will be explored as they relate to the fundamental employment and governance issue. Topics such as patent and copyright ownership, conflict of interests, and collective bargaining relationships will also be discussed. The question of negotiating "protections" from unwarranted and unwanted corporate invasion will be addressed. It is hoped that this paper will raise some of the questions needed to generate a dialogue that will focus upon employment relationships within the context of academic/corporate partnerships.

VIEWPOINTS

A. Faculty

Faculty involvement with both private and public corporations is not new to academe. Large numbers of the professoriate have long established ties with industry and/or government either as consultants or authors. This practice is so well established that many universities have provisions whereby a certain percentage of a faculty member's time, often prorated at one day per week, can be devoted to such activities. These arrangements are generally regarded as beneficial to both faculties and their institutions and are peripheral to this subject.

The problem addressed in this paper concerns situations where corporate involvement on the campus is not done according to the "rules of the game." Restrictions are often imposed on both faculty and administrations that threaten the very nature and uniqueness of the academic enterprise. Corporations have come to the campuses with large grants seeking research partnerships, however, problems have invariably arisen. Among these are:

- personnel policies
- faculty appointments
- dissemination of research
- patent restrictions
- dissemination of products
- protection of investment outlay
- job security claims
- work jurisdiction claims
- subcontracting
- conflict of interest

The AAUP's Committee "A" on Academic Freedom and Tenure, concerned over these and other questions, commissioned a study on this subject. In its report entitled "Corporate Funding of Academic Research,"[3] numerous questions concerning conflict of interest and disclosure within academic/corporate partnerships are raised.

B. Administration

The extent of academic/corporate partnerships, while widespread, is unknown in terms of any dollar figure or program number. No one clearinghouse exists, except perhaps for the Internal Revenue Service, to keep track of such projects. While the following list is not meant to be exhaustive, it is a representative sampling of corporate/academic programs currently in existence.

Examples of corporate supported programs in academic institutions include:

- Carnegie-Mellon - Westinghouse Electric Robotics Institute
- Columbia University - Bristol Meyers Molecular Biology Program
- M.I.T. - IBM and Digital Equipment Computer Programs
- Arizona State University - Motorola Engineering Program
- Washington University - Monsanto Chemical Research Program
- M.I.T. - W.R. Grace Micro-Biology Program
- Harvard - Dupont Genetic Engineering
- Harvard - Monsanto Bio-Medical Research Program
- Triton College - General Motors Program
- R.P.I. - Computer Graphics and Computer-aided Design Program (over 100 corporate sponsors)
- Massachusetts General Hospital (Harvard Medical School affiliation) - Hoechst A.G. Chemical Research Program[4]

Few can deny the mutual gains accruing from research partnerships between universities and corporations. Goldstein[5] identifies several of these advantages including:

- widening of university funding channels
- fewer external accountability restrictions than found in government grants
- increased stimulation to corporate practitioners
- alleviate the creation of costly new in-house corporate research units
- potential job market for students

In 1978, in response to the growing number of such partnerships, the American Council on Education founded the Business-Higher Education Forum. In the Forum's 1984 report, "Corporate and Campus Cooperation: An Action Agenda," several suggestions including a greater sharing of experts between businesses and universities were advocated. Other recommendations included:

- increased tax benefits to corporations who share products with colleges
- increased use of campus resources
- increased financial support for student research
- increased corporate financial aid for college tuition[6]

While it is not the purpose of this paper to comment on this report and its recommendations, it is significant to note the connection between the rapid development of these partnerships and the establishment of the Business-Higher Education Forum.

Universities who sought corporate partnerships have often found themselves addressing related issues. In addition to negotiating funding requirements, they must also ensure that corporate political, investment and employment practices are compatible with university goals. For example, companies doing business in South Africa or the Middle East might be considered tainted by their associations with these controversial investments and considered a risk for academic/corporate partnership. Universities must be aware that corporate funding packages often come with corporate "baggage" and one cannot readily separate one from the other. Furthermore, corporate employment practices are subject to university review with respect to affirmative action programs.[7]

C. Corporate

Corporations appear to have embraced academic partnerships. Numerous reasons have been suggested, not the least of which is financial. Also, as the cost of production increases, corporations have been forced to contain their expenditure levels while at the same time increasing productivity. These reasons account, in part, for corporate entry onto the research campus where there exists a reservoir of trained academics with substantial facilities willing to join with industry for a variety of motives.

Another reason for the proliferation of academic/corporate partnerships can be traced to recent changes in federal tax laws which resulted in the creation of Research and Development Limited Partnerships (RDLP). Bartlett and Siena see RDLP as a vehicle for universities to exploit for profit certain technological know-how. In their analysis of RDLP, they cite various tax advantages which accrue to the university and individual investors in terms of deductions for "research and experimental expenditures." Further, the ability to treat taxes on a long-term capital gains basis is another distinct advantage. They conclude by stating:

> The RDLP offers the university a new and better approach to determine the commercial potential of its technology, fund the development of that technology, and bring it to market. The RDLP, due to the tax laws, is an attractive vehicle for investors....Finally, the RDLP offered the university the opportunity to minimize its entanglement with a commercial venture, yet at the same time, increase its chances of economic rewards.[8]

Partnerships between universities and corporations have the features of symbiotic relationships: the university and individual faculty member are the recipients of grants (far less complex and easier to administer than federal or state grants) while at the same time, the corporation receives certain tax and patent advantages. Yet, as partnerships develop, conflicts of interest often arise as universities become aware of the corporate need to protect their investment thereby compelling them to seek exclusive licenses as a means of maintaining their competitive edge.

One might argue, with a degree of success, that the private corporation has every right to share in the research facilities at publicly-supported universities yet, the issue is far deeper. What is at issue here is not restricting entry onto the campus by the corporation but, instead, ensuring that the "rules of the game" are those of academe and are closely adhered to.

One interesting new development is the reverse pattern of corporations now creating and supporting their own corporate education institutions which, in some instances, are degree-granting programs for both employees and non-employees. Among these programs are:

- Wang Institute of Graduate Studies
- Hamburger University of McDonald's
- Holiday Inn University
- Arthur D. Little Management Education Association

Both Wang and Little have received New England accreditation, while McDonald's has requested permission from the Illinois Board of Higher Education to grant the Associate's Degree. While four examples do not constitute a trend, the idea of corporations forming their own proprietary schools and competing with traditional academic programs must be viewed with concern to those involved with the demographics of higher education.

It is doubtful that the growth of academic/corporate partnerships will diminish; in fact, most indications suggest the opposite. What is needed is for the corporate planners in this field to acknowledge that they are no longer operating solely in the corporate boardroom and that new "rules of the game" must be understood and applied.

LABOR RELATIONS CONCERNS

Three labor relations issues—job security, subcontracting and unit jurisdiction—must be addressed when academic/corporate partnerships are created. Of these three, the first, and perhaps most significant, is that of protecting the job itself. In this period of diminished mobility, academic faculty, both on unionized and non-unionized campuses, tend to view this issue as paramount to their economic survival. The presence of the "partnership" on the campus might mean an erosion of job opportunities that faculty perceive as their own. For example, should a university enter into a research partnership to study genetics and not use its own faculty for this project, a legitimate job security claim can be made.

A second labor relations issue is the threat to job security by the use of subcontracting. On the non-unionized campus few, if any, prohibitions against this practice can be imposed. However, industrial labor agreements have long contained restrictions which, if not placing a complete barrier on subcontracting, severely limit those situations when the employer may utilize it. The same type of restraints are occasionally found in collective bargaining in higher education and can be used as protection from corporate interference in academe.

A third labor relations concern is that of unit work jurisdiction claims which trace their genesis to the definition of the bargaining unit contained in the collective bargaining agreement. Unless a position is specifically excluded from the unit, the bargaining agent generally has the exclusive right to negotiate the terms and conditions of employment for that title. Once again, the presence of the corporation on the campus might obfiscate that protection since non-unit members or persons with excluded titles might be utilized to conduct research or teaching that would have been performed by bargaining unit members. An entire new category of "research academics" has developed on numerous campuses. These individuals are generally found in non-tenure-bearing positions and are frequently excluded from faculty bargaining units with their terms and conditions of employment negotiated on a case-by-case basis.

The inclusion of job security, subcontracting and work jurisdiction language might be considered as potential solutions by faculty at unionized campuses faced with this type of issue. Furthermore, it is also to management's advantage to negotiate these types of arrangements prior to corporate involvement for it is clear that absent any rules, corporate rules would prevail.

Patent and copyright guidelines and constraints have also been negotiated in collective bargaining contracts. A National Center computerized BRAIN (Baruch Retrieval of Automated Information for Negotiations) search was conducted concerning the frequency of contract language relating to this area. One hundred and twenty-nine contracts were analyzed with respect to the following: patent ownership, proceeds, licensing rights, waiver of rights, and matters subject to copyright. Although 80 contracts in the sample contained no provision whatsoever concerning patent ownership, 25 contracts did contain some type of patent and copyright protections. The most frequently encountered provision, although only representing four percent of the sample, provided for a sharing of rights and ownership between the university and faculty member for materials commissioned by the institution. Other clauses provided for the university holding exclusive rights to patents produced with the use of university facilities and other types of shared arrangements.

Receipts derived from proceeds from the exploitation of patent rights were generally distributed on a prorated basis with fifteen agreements providing specific formulas. Only two agreements contained provisions where the right to license a product (where the patent was held exclusively by the faculty member) was reserved to the faculty member. In both of these cases, the licenses were restricted to internal university use only. Seven agreements addressed the area of waiver of patent rights. Twenty agreements specified the type of materials that could be copyrighted. Included were: curriculum, syllabi, artistic material, audio-visual material or computer programs.

In sum, the number of collective bargaining agreements containing patent and/or copyright clauses, while small, is expected to grow as the 800 plus campuses currently covered by faculty collective bargaining agreements attempt to address the problems associated with academic/corporate partnerships.

UNIVERSITY RESPONSE

The major response thus far by universities toward resolving problems concerning academic/corporate partnerships has been to promulgate broad policy statements concerning conflict of interest and copyrights. While not generally associated with the collective bargaining process, these statements do place constraints and offer guidance to individuals and institutions concerning corporate involvement.

Representative language from two such documents is set forth below. In the Statement of Policy on Conflicts of Interest, as set forth by the President and Fellows of Harvard College, faculty members are advised of the following:

> ...Every member is expected to accord the University his or her primary professional loyalty, and to arrange outside obligations, financial interests, and activities so as not to conflict or interfere with this overriding commitment to the University.[9]

The Harvard Statement also sets forth procedural guidelines for the establishment of a Standing Committee on Extramural Professional Activities, as well as a mechanism to resolve any disputes. Acknowledging that prior approval is not required for most traditional activities, i.e., consulting, publishing, lectures and service on boards, the Statement delineates two categories in which prior consultation is suggested or required. The first concerns activities which, "Although no irreconcilable conflict of interest is involved, consultation should be initiated with the administration." Included are activities which "...might enable a member to influence Harvard's dealings with an outside organization in ways leading to personal gain or to improper advantage for anyone."

For those activities "...that seem likely to present an unacceptable conflict of interest or commitment...," prior discussion must be initiated with the administration. Included in this category are "Situations in which the individual assumes executive responsibilities for an outside organization that might seriously divert his or her attention from University duties or create other conflicts of loyalty...." Also included in this grouping would be "Used for personal profit of unpublished information emanating from University research or other confidential University sources..." or "Circumstances in which a substantial body of research that could and ordinarily would be carried on within the University is conducted elsewhere to the disadvantage of the University and its legitimate interests."

The New York University guidelines concern themselves with patents and copyrights and are contained both in a Board of Trustees Policy Statement, as well as in the New York University Faculty Handbook. The Faculty Handbook Statement appears to give faculty members wide latitude in obtaining individual copyrights.

> ...The principal exception to this permissive policy relates to programs financed by grants or governed by contracts in posing express obligations upon the University.[10]

NYU has a separate contract with University Patents, Inc. "...a patent management firm engaged in the business of promoting patentable inventions, whereby the University will submit to University Patents, Inc., any invention to which the University has acquired or has a right to acquire title and rights to commercial exploitation and which the University believes may be patentable and should be developed for use by the public."[11]

The guidelines from Harvard and NYU are illustrative of the types of approaches universities are taking concerning academic/corporate partnerships. While proprietary research appears to be supported, the development of conflict of interest, patent and copyright statements offer some guidance in this area.

SUMMARY AND CONCLUSIONS: A LOOK TO THE FUTURE

The post-World War II model of academic/corporate partnerships appears to be somewhat engrained in the nation's leading research colleges and universities. Most indications suggest that this phenomenon will continue to grow and spread to non-research oriented colleges and community colleges where teaching is the prime mission. Faculty organizations have begun to discuss this movement and develop new procedures for protecting their interests. The "problem" as viewed from a faculty perspective concerns employment and governance relationships and not the legitimacy and/or wisdom of accepting such funding.

The issues presented in this paper have generated myriad concerns at institutions of higher education. While no solution can remedy all, several options are set forth below for consideration.

The first option open to faculty at unionized campuses is to negotiate job security protections against loss of positions and an erosion of perquisites. Industrial subcontracting restrictions could be introduced and included in academic collective bargaining agreements. Contract clauses dealing with work jurisdiction and unit definition are other devices which faculty associations can suggest in order to limit the creation of special exempt research positions.

It should be noted that faculty are somewhat reluctant to model their collective bargaining agreements after trade unions, however, the job security threats might become so severe that they have no other choice.

An approach available for non-unionized campuses is the establishment of research centers similar to the Stanford University Center for Integrated Systems or the M.I.T. Center for Information Systems Research. Both of these Centers serve as brokers between corporate sponsors and university faculty whereby individual faculty members design their own research programs, receive external funding and continue to maintain academic control.

A third route is to foster the development of academic/corporate partnerships with a cooperative spirit designed to ensure mutual benefits. In the

AAUP report on this topic, several recommendations of this nature are submitted. Included, is the formation of:

- plans to facilitate the exchange of staffs and equipment
- conflict of interest guidelines
- disclosure requirements
- patent and copyright guidelines
- off-campus activities guidelines[12]

A fourth option is to replicate other models; the College/School of Nursing/Hospital experience can be studied. In many instances, teaching hospitals relinquish their schools of nursing programs to colleges, despite the fact that funding is still controlled by the hospital. The "rules of the game" that prevail are those of academe and not of the hospital. Issues such as staffing, admission requirements, and other educational matters are determined by the college. Acknowledging that this example might not be parallel, there is a sufficient degree of similarity which makes the comparison worthwhile.

Other approaches should be explored. Although each institution and faculty group should be free to design its own solutions, a certain degree of commonality can be expected. Industry must be made aware that entrance onto the campus, whether unionized or not, must be done in accordance with certain long-standing rules. Even though corporate funding might be attractive, it cannot be expected to reshape the mission of the university. On the other hand, university administrators cannot use these programs as a subterfuge for avoiding their own responsibilities and obligations. Faculty also must be cautioned not to consider every program a threat and indeed the well-being of the university may depend, to a large extent, on its ability to attract external funding.

Research is needed to determine how this problem is currently being treated in those institutions which have formed academic/corporate partnerships. Programs currently in existence can be viewed as on-going laboratory experiments. If it is still too early in the process to formulate rigid guidelines on this topic, the AAUP's awareness and dialogue focus faculty concern in this area.

The shape of future academic/corporate partnerships is unknown; yet, as in any new relationship, rules must be redefined and tested. While much of the information currently available is derived from perception-based models and not empirical data, the issue is defined enough so that future study and research is desirable in order for us to analyze and resolve the new threats that these partnerships pose to faculty employment relationships in institutions of higher education.

FOOTNOTES

1. Clark Kerr, The Uses of the University (Cambridge: Harvard University Press, 1963), p. 69.

2. Ibid.

3. Corporate Funding of Academic Research by Sub-committee of the American Association of University Professors, Committee "A" on Academic Freedom and Tenure (Washington, D.C.:, 1983).

4. This list was compiled from a review of various indices, abstracts and corporate annual reports. No one source was available for a complete listing of all such programs. This list should be read as a representative grouping and is not intended to be all inclusive.

5. Matthew Goldstein, "University-Corporate Relations: Issues for the City University of New York," New York, New York, 1983.

6. The Chronicle of Higher Education, May 9, 1984.

7. One specific example of a university refusing to do business with corporations that failed to answer affirmative action questionnaires is the University of Cincinnati. See The Chronicle of Higher Education, November 2, 1983.

8. Joseph W. Bartlett and James V. Siena, "Research and Development Limited Partnerships as a Device to Exploit University Owned Technology," The Journal of College and University Law, Spring, 1983-84, Vol. 10, No. 4, p. 454.

9. Faculty of Arts and Sciences of Harvard College, "Statement of Policy on Conflicts of Interest," Appendix.

10. New York University Faculty Handbook, "Statement of Policy on Copyrights," New York, New York, 1972, pp. 123-124.

11. New York University, "Patent Policy Statement," New York, New York, 1983, pp. 1-9.

12. Op. cit., at 3.

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